IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

BRANDEN C. LIGHTFOOT and
LEAH LIGHTFOOT — PLAINTIFFS

vs. — Civil Action No. 1:94cv330-D-D
(consolidated with 1:95cv07-S-D)

LOWNDES COUNTY SHERIFF'S DEPARTMENT, DENNIS E. PRESCOTT, Sheriff of Lowndes County, BUTCH HOWARD, DANNY STARKS, JOEY BRACKIN, BOBBY GRIMES, CRAIG TAYLOR, CHARLIE McVEY and LOWNDES COUNTY BOARD OF SUPERVISORS — DEFENDANTS

MEMORANDUM OPINION

Presently before the court is the motion of the defendants to dismiss this action for failure to state a claim upon which relief can be granted. Finding the motion not well taken, the same shall be denied.

On December 4, 1988, the plaintiff Brandon Lightfoot was arrested by Lowndes County authorities and incarcerated for approximately twenty-two (22) days. He and his spouse, Leah Lightfoot, have brought this action to challenge his arrest, confinement and various conditions of his confinement while housed at the Lowndes County Jail.

I. STANDARD FOR A MOTION TO DISMISS

A Rule 12(b)(6) motion is disfavored, and it is rarely granted. Clark v. Amoco Prod. Co., 794 F.2d 967, 970 (5th Cir. 1986); Sosa v. Coleman, 646 F.2d 991, 993 (5th Cir. 1981). Dismissal is never warranted because the court believes the plaintiff is unlikely to prevail on the merits. Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S. Ct. 1683, 1686, 40 L.Ed.2d 90 (1974). Even if it appears an almost certainty that the facts alleged cannot be proved to support the claim, the complaint cannot be dismissed so long as the complaint states a claim. Clark, 794 F.2d at 970; Boudeloche v. Grow Chemical Coatings Corp., 728 F.2d 759, 762 (5th Cir. 1984). "To qualify for dismissal under Rule 12(b)(6), a complaint must on its face show a bar to relief." Clark, 794 F.2d at 970; see also Mahone v. Addicks Util. Dist., 836 F.2d 921, 926 (5th Cir. 1988); United States v. Uvalde Consolidated

Indep. Sch. Dist., 625 F.2d 547, 549 (5th Cir. 1980), cert. denied, 451 U.S. 1002. Dismissal is appropriate only when the court accepts as true all well-pled allegations of fact and, "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Thomas v. Smith, 897 F.2d 154, 156 (5th Cir. 1989), quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 100-02, 2 L.Ed.2d 80 (1957); see Mahone, 836 F.2d at 926; McLean v. International Harvester, 817 F.2d 1214, 1217 n.3 (5th Cir. 1987); Jones v. United States, 729 F.2d 326, 330 (5th Cir. 1984). While dismissal under Rule 12(b)(6) ordinarily is determined by whether the facts alleged, if true, give rise to a cause of action, a claim may also be dismissed if a successful affirmative defense appears clearly on the face of the pleadings. Clark, 794 F.2d at 970; Kaiser Aluminum & Chemical Sales, Inc., 677 F.2d 1045, 1050 (5th Cir. 1982), cert. denied, 459 U.S. 1105.

II. DISCUSSION

The defendants' assert in their motion that the plaintiffs' claims are barred by the applicable statute of limitations. It is the contention of the defendants that the appropriate statute of limitations to apply in this case is the one-year statute applicable to claims arising under the Mississippi Tort Claims Act. Miss. Code Ann. § 11-46-11 (Supp. 1995). The undersigned does not agree.

Because Congress has not provided a statute of limitations for civil rights actions under § 1983, federal courts borrow the general personal injury limitations period of the forum state. Owens v. Okure, 488 U.S. 235, 249-50, 109 S.Ct. 573, 581-82, 102 L.Ed.2d 594 (1989) ("Where state law provides multiple statute of limitations for personal injury actions, courts considering § 1983 claims should borrow the general or residual statute for personal injury actions."); Gartrell v. Taylor, 981 F.2d 254, 256 (5th Cir. 1993); Jackson v. Johnson, 950 F.2d 263, 265 (5th Cir. 1992). Under Mississippi law, the general residual statute of limitations is three years for claims arising on or after July 1, 1989, and six years for causes of action accruing before that date. Miss. Code Ann. § 15-1-49. The plaintiffs' claims in this case accrued late in 1988 or early in 1989, and therefore are properly constrained by a six-year limitations period.

Prior to the Owens decision, Fifth Circuit precedent established that § 1983 actions were

bound by a one-year statute of limitation. E.g., Gates v. Spinks, 711 F.2d 916, (5th Cir. 1985). The defendants do not contest the ruling of Owens, but rather argue that its holding should not apply retroactively to this case. While some courts have found difficulty in applying Owens retroactively, this court does not have such reservations. James B. Beam Distilling Co. v. Georgia, --- U.S. ---, 111 S.Ct. 2439, 2445-46, 115 L.Ed.2d 481 (1991); Lufkin v. McCallum, 956 F.2d 1104, 1106 (11th Cir. 1992) (Owens applied retroactively given that new rule applied retroactively to parties in Owens); Gates v. Walker, 865 F. Supp. 1222, 1232 (S.D. Miss. 1994) (same).

In addition, the defendants assert that in light of the adoption of the Mississippi Tort Claims Act in 1993, application of the Owens rule mandates a different result. Because of the Act, they charge that application of a one-year statute of limitations from that act is proper. Miss. Code Ann. § 11-46-11(3). The court is not convinced that the Mississippi Tort Claims Act has any relevance[1] to the case at bar. Defendants' contention misses the mark - they asseverate that because the limitations period contained in § 11-46-11(3) is the only limitations period for actions against the state, "[its] political subdivisions or its employees [are] therefore not subject to multiple statute of limitations analysis." Defendants' Brief in Support of Motion to Dismiss, p. 5. If this reasoning is valid, then Owens was wrongly decided, for the one-year period in Owens was also an exclusive limitations period for those specified intentional torts. Owens, 488 U.S. at 237; 102 L.Ed.2d at 598. The question is not whether political subdivisions or its employees are subject to multiple limitations periods under state law, but rather whether tort actions for personal injury are subject to multiple periods of limitation. See Manrique v. Sunnydale Dept. of Public Safety, 1996 WL 241603, *4 (N.D. Cal. May 1, 1996) (applying Owens to find that since California Tort Claims Act provides different statute of limitations than California's residual statute of limitations, state tort claims act had no application to plaintiff's § 1983 claims against public entity). The net result of Owens is that the statute of limitations for § 1983 actions will either be the **only** statute of limitations for personal injury

[1] The defendants would also have this court apply the Mississippi Tort Claims Act retroactively to the plaintiffs' claims in this case. As the defendants' argument fails for different reasons, the court does not reach the issue. See Starnes v. Vardaman, 580 So. 2d 733, (Miss. 1991).

tort actions in a state, or the **general** statute of limitations for personal injury tort actions in that state.

Now that the court has established that a six-year statute of limitations period applies to the plaintiffs' claims in this case, the court's inquiry turns to what claims are properly dismissed by this limitations period. While some of the plaintiffs' claims may appropriately be dismissed at a future date in this proceeding for failure to adhere to the statute of limitations, the court cannot say at this juncture that any of them must be presently dismissed. A statute of limitations is subject to tolling by various means, and amendments to pleadings are capable of relating back to the filing of the original complaint to avoid the application of a limitations period. See, e.g., Washington v. Breaux, 782 F.2d 553, 554 n. 1 (5th Cir. 1986) (court to apply forum state's law of tolling); Smith v. Sneed, 638 So. 2d 1252, 1255 (Miss. 1994) (acknowledging tolling based upon "continuing tort" by defendant); Kansa Reinsurance Co., Ltd. v. Congressional Mortg. Corp. of Texas, 20 F.3d 1362, 1366-38 (5th Cir. 1994) ("relation back" doctrine); Katz v. Princess Hotels Int'l, 839 F. Supp. 406, 411 (E.D. La. 1993) ("relation back" doctrine); Fed. R. Civ. P. 15(c). As a consequence, it cannot be said at this point that the plaintiffs "can prove no set of facts in support of [their] claim that would entitle [them] to relief." The motion of the defendants shall be denied.

A separate order in accordance with this opinion shall issue this day.

THIS ___ day of June, 1996.

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United States District Judge

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ORDER DENYING MOTION TO DISMISS

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED THAT:

1) the motion of the defendants to dismiss the plaintiffs' claims for failure to state a claim upon which relief can be granted is hereby DENIED.

SO ORDERED, this the ___ day of June, 1996.

_____

United States District Judge